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September 26, 2003

VIA FACSIMILE

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

Re: Docket No. OP-1158

Dear Ms. Johnson:

We respectfully submit this letter in response to the request of the Board of Governors of the Federal Reserve System ("Board") for public comments on the Board's proposed interpretation and supervisory guidance of the anti-tying restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 ("Section 106"), published in the Federal Register at 68 Fed. Reg. 52024 (Aug. 29. 2003).

Specifically, we seek inclusion in the list of permissible tying arrangements in Part IV.A of the interpretation and supervisory guidance an arrangement in which a bank offers reduced rates on loans to mortgage originators based on the amount of mortgage loans sold by the mortgage originator to the bank, which is nearly identical in form to the three-party retail paper arrangement approved by the Board on May 23, 1996 in an exemption order ("Exemption Order") involving National City Corporation ("National City"), Cleveland, Ohio and Huntington Bancshares, Incorporated ("Huntington"), Columbus, Ohio. 82 Fed. Res. Bull. 688 (1996). We believe this particular arrangement should be formally included in the interpretation and supervisory guidance to clarify the Board's view that such arrangements are exempted by Section 106. The Board may want to consider malting it clear that this position would also apply to a bank offering reduced rates on loans to any type of lender based on the amount of loans sold by the lender to the bank.

The Exemption Order allowed the banking subsidiaries of National City and Huntington to offer reduced rates on "floorplan" loans to automobile dealerships based on the amount of retail paper financing sold by the dealership back to the subsidiaries. The Board reasoned that the sale of the three-party retail paper to the bank may be considered the equivalent of the automobile dealership obtaining a discount service from

the bank. Under Section 106, a bank may not provide or vary the consideration for any product or service on the condition or requirement that the customer obtain some additional credit, property or service from the bank or affiliate of the bank, *other than* a "traditional bank product" – namely "a loan, discount, a deposit or trust service."

As the Board noted in the Exemption Order, a discount by a bank is defined in Black's Law Dictionary as "a drawback or deduction made upon its advances or loans of money, upon negotiable paper or other evidences of debt payable at a future day, which are transferred to the bank." Exemption Order, note 8. Since tlie total amount paid by the banks for the retail paper in the National City and Huntington proposals would be less than the total amount of principal and interest the banks expected to collect from the obligor over the term of the transaction, the purchase of the retail paper from the automobile dealership by the bank could be characterized as discounting the paper.[1] Similarly, if a bank purchases mortgage loans at a price less than the amount the bank expects to collect from the obligor of these loans over the term of the transaction, the purchase of mortgage loans from mortgage originators may also be characterized as a discount, and thus, the bank's reduction in consideration for its loans to the mortgage originators (the desired product) on the condition that the mortgage originator obtain the discount (the tied product) would be a permissible tying arrangement.

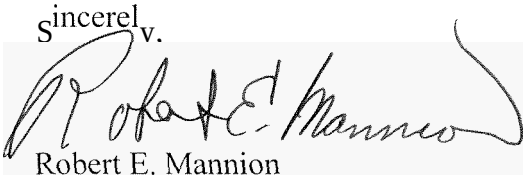
Furthermore, we support the Board's approach of adopting the contents of the proposed interpretation and supervisory guidance as an official interpretation. Currently, the Board's views on Section 106 are largely embodied in unwritten law and scattered throughout a number of disparate exemption orders and staff letters. We believe it is preferable for the Board's guidance to be adopted as an official interpretation to consolidate and formalize the Board's views on Section 106 and reduce uncertainty among banking organizations in applying the anti-tying provisions.

We appreciate this opportunity to submit comments on the Board' proposed interpretation and supervisory guidance on Section 106 and hope these comments will be

[1] In another context, the Board held that the "purchase" of a mortgage note at face value constituted a "discount" for purposes of Section 23A of the Federal Reserve Act. *See* 12 C.F.R. § 250.250 (2002).

taken into consideration by the Board. If you have any questions regarding the matters discussed in this letter, please do not liesitate to contact us.

Sincerely,



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